

REMARKS

Applicant has added claim 21 to further delineate the subject matter to which Applicants are entitled. Support for the subject matter of claim 21 can be found throughout the application and claims as originally filed. For example, support for the subject matter of claim 21 can be found in original claim 20, in the Examples, and in Fig. 6. Applicant submits that no new subject matter has been added to the application.

The Examiner has restricted the claims to one of the following inventions under 35 U.S.C. 121:

I. Claims 1-8 drawn to a mesoporous material, classified in class 521, subclass 99.

II. Claims 9-20, drawn to a method of making a mesoporous material, classified in class 521, subclass various.

Applicant provisionally elects, without traverse, the claims of Group I (claims 1-8), and submits that new claim 21 properly falls within Group I. Applicant also provisionally elects, with traverse, as a species of silica.

The Restriction Requirement is traversed on the basis that Restriction Requirements are optional in all cases (M.P.E.P. § 803). If the search and examination of an entire application can be made without serious burden, the Examiner must examine the application on the merits, even though it includes claims to distinct or independent inventions. M.P.E.P. § 803. Applicant submits that a search of both groups would not be so burdensome as the Examiner alleges.

Applicants also respectfully traverse the Examiner's requirement for restriction to single species that constitutes the mesoporous material. Applicants respectfully remind the Examiner that they are entitled to examination of a reasonable number of species, and that election of species should be merely for the convenience of the Examiner in initiating the search. Moreover, as provided by the MPEP, species may be related inventions and need not be subject to restriction. *See* MPEP § 806.04(b). In particular, where species are claimed under a common genus and are related, the question of restriction is determined by the practice applicable to election of species and the practice applicable to

other types of restrictions. *See id.*

Here, at least claims 1 and 9 are generic with regard to the mesoporous material. These generic claims explicitly define how the claimed species are related (i.e. they are both constitute a porous network or a mesoporous material). The Examiner is reminded that M.P.E.P. § 803.02 states that “if the members of the Markush group are sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, the Examiner must examine all the members of the Markush group in the claim on the merits, even though they are directed to independent and distinct inventions. In such a case, the Examiner will not . . . require restriction. [S]hould no prior art be found that anticipates or renders obvious the elected species, the search of the Markush-type claim will be extended . . . to the extent necessary to determine patentability of the Markush-type claim.” (Emphasis added.)

Applicant requests reconsideration of the restriction requirement and the election of a single porous network/mesoporous material. If this request is denied, Applicant submits that the additional species should be considered as required under M.P.E.P. § 803.02, if a prior art search of the elected species turns up no relevant prior art.

Applicant also reserves the right to file divisional application(s) on the non-elected subject matter if no generic claim is allowed.

Serial No.: 10/826,667

Filed: April 16, 2004

Title: STIMULI RESPONSIVE MESOPOROUS MATERIALS FOR CONTROL OF
MOLECULAR TRANSPORT

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (516) 795-6820 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

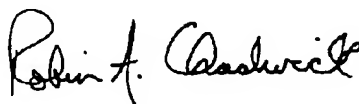
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By their Representatives,

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Date April 10, 2006

By



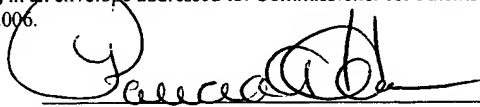
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 10th day of April, 2006.

PATRICIA A. HULTMAN

Name



Signature